

Alabama Administrative Rules & Regulations

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440-X-1-.01 Definitions

(1) *Code of Alabama 1975*, Section 34-31-18, provides for definitions of the following terms: “certified contractor,” “installation,” “service and repair,” “board,” “heating and air conditioning system or systems,” “administrative procedures law: and “responsible charge.”

(2) Act. The term “Act” as used in these rules shall mean Title 34, Chapter 31 of the *Code of Alabama* regulating the heating and air conditioning contractors industry.

(3) Alabama Administrative Procedure Act. The term “Alabama Administrative Procedure Act” refers to the Act codified at Title 41, Chapter 22, of the *Code of Alabama*.

(4) Board. The term “Board” as used in these Rules shall mean the State Board of Heating and Air Conditioning Contractors. The Board shall be comprised of members appointed by the Governor, Lieutenant Governor, Speaker of the House, and President Pro Tempore of the Senate pursuant to Section 34-31-20, *Code of Alabama 1975*. The public may make submissions and requests to the Board in writing at the following mailing address:

State of Alabama
Board of Heating & Air Conditioning Contractors
100 North Union Street, Suite 630
Montgomery, Alabama 36130

(5) Certificate. The term “certificate” as used in these Rules shall mean a certificate issued to or renewed by a certified contractor by the Board pursuant to the Act.

(6) Certified Contractor. The term “certified contractor” as used in these Rules shall mean any individual or any regularly employed person for any partnership or corporation who for hire is engaged in the installation or service and repair of heating and air conditioning systems; provided that nothing in this chapter shall apply to retail sellers of heating and air conditioning systems who do not install said systems themselves. A certified contractor is authorized to install or service and repair or replace natural gas heating and air conditioning appliances, including specifically the servicing, repair, or replacement of those appliances, including specifically the servicing, repair, or replacement of those appliances in manufactured housing set up as stationary housing, but excluding the piping to such appliances, and except as otherwise prohibited by law.

(7) Retail Seller. The term “retail seller” shall mean any person (as defined in these rules) who sells a heating and air conditioning system or

systems, but does not provide for the service, repair or installation of said system.

(8) Inactive Contractor. The term “inactive contractor” refers to any certified contractor who elects to obtain inactive status as a certified contractor. To obtain status as an inactive contractor, the certified contractor shall notify the Board in writing of his desire to seek inactive contractor status and return his licensing card reflecting his status as a certified contractor. The Board shall then issue the contractor an inactive contractor licensing card. Inactive contractors shall be required to pay an annual licensing fee in an amount that does not exceed one-half of the annual licensing fee for certified contractors. An “inactive contractor” shall not be eligible or allowed to purchase local licenses or be issued any permits to perform installation, service, or repair work, or to solicit or bid to perform installation, service or repair work, on heating and air conditioning systems. An inactive contractor may be allowed by the Board to reactivate certification as a “certified contractor” at any time by notifying the Board in writing of his desire to return to “certified contractor” status and by informing the Board that he or she has obtained the proper bond pursuant to Alabama law and the Rules and Regulations of the Board. The inactive contractor shall also submit payment to the Board of the difference in fees between “certified contractor” and “inactive contractor” status.

(9) Person. The term “person” as used in these Rules shall mean any natural person, limited or general partnership, corporation, association, limited liability company, or other legal entity, or any combination thereof.

(10) Bond. The term “bond” as used in these Rules shall mean that performance bond described in the Act.

(11) Minimum Standards. The term “minimum standards” as used in these Rules shall mean those minimum repair and service standards adopted for certified contractors by the Board pursuant to the Act.

(12) Continuing Education. The term “continuing education” as used in these rules shall mean the required hours of continuing education required by state law for certified contractors.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-18

History: Filed January 21, 2003

440-X-2 Organization and Administrative Procedures of the Board.

440-X-2-.01. Purpose.

The Alabama Board of Heating and Air Conditioning Contractors was created to certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install, service, or repair heating and air conditioning systems.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-19

History: Filed January 21, 2003

440-X-2-.02. Officers.

The Board annually shall elect from its members a chairman, vice-chairman, and a secretary. The chairman shall preside over meetings of the Board when present and shall appoint all committees of the Board. The vice-chairman shall preside over meetings of the Board in the absence of the chairman. The chairman shall designate another member to preside at meetings from which both the chairman and vice-chairman are absent. The secretary of the Board shall keep all minutes, books, records, and files of the Board; shall issue all certificates in the name of the Board; shall send all notices and attend to all correspondence directed by the Board; shall receive and deposit fees; and shall perform all incidental duties of the office as directed by the Board. The secretary shall give bond, payable to the Governor, in the penal sum of Five Thousand Dollars (\$5,000.00) for the faithful performance of his duties, and the premium thereof shall be paid from the fees of the Board. No moneys shall be withdrawn from the funds of the Board except by direction of the Board as provided in state law.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21

History: Filed January 21, 2003

440-X-2-.03. Executive Director.

The Board may select and hire an executive director to serve at the pleasure of the Board. The executive director shall be responsible for the administration of Board policies. The executive director shall perform duties assigned by the Board and shall perform the duties of the secretary of the Board if directed by the Board. The executive director shall also fulfill the duties assigned to the executive director or executive secretary as described in the Alabama Administrative Procedure Act. The executive director shall be

designated as the agent for the Board for service of legal process upon the Board. The executive director shall have custody of and shall safeguard and keep in good order all property and records of the Board. The executive director shall sign all instruments and matters that require approval of the Board. The executive director shall receive and deposit all funds to the credit of the board in the State Treasury and shall review all bills before requesting the State Comptroller to make payment of any accounts. The executive director shall keep the records of the Board which shall include, without limitation, all applications for certification by the Board and supporting documentation; a complete and permanent record of all applications that fail to result in certification; evidence of the important business transactions of the Board; a complete and permanent record of all certifications issued by the Board; and a record of all enforcement and disciplinary actions taken by the Board. All correspondence to the Board, including requests for information and the submission of requests, shall be made to the executive director at the Board's office in Montgomery, Alabama.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(a)

History: Filed January 21, 2003

440-X-2-.04. Deputy Director and Other Staff

- (1) The Board may also employ a deputy director who shall serve at the pleasure of the Board. The salary and compensation of the deputy director shall be set by the Board and shall not exceed the salary set for the executive director.
- (2) The Board may also employ other full time or part time administrative staff who shall work under the direction and supervision of the executive director.
- (3) All Board staff, including the executive director and deputy director, shall be entitled to reimbursement for travel the same as other employees of the State of Alabama, including actual expenses for authorized out-of-state travel, and per diem and transportation costs for in-state travel.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(a)

History: Filed January 21, 2003

440-X-2-.05. Meetings.

- (1) The Board shall conduct regular meetings to perform its lawful duties at least once in each three-month period.

- (2) The Board may meet on other occasions as necessary to conduct its business and to comply with state law and the Rules and Regulations of the Board. Special meetings of the Board may be called by the chairman or by a majority of the members of the Board.
- (3) Each member of the Board shall be given at least ten days notice of the time, place, and purpose of any regular meeting. This notice may be waived by the individual member and is waived by the member's presence at the called meeting. Each member of the Board shall receive reasonable notice for all called special meetings. The executive director shall provide reasonable notice to the public of all regular and special meetings of the Board as appropriate under the circumstances.
- (4) A majority of the Board shall constitute a quorum for the transaction of all business.
- (5) The Board may meet at its Board offices in Montgomery, Alabama or such other location as designated to conduct the business of the Board.
- (6) Each member of the Board shall receive One Hundred Dollars (\$100.00) per day for attending sessions of the Board or its committees and, in addition, shall be reimbursed for such necessary travel as are paid to state employees, to be paid from fees collected by the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21, 34-31-23

History: Filed January 21, 2003

440-X-2-.06. Voting.

All Board members, including the chairman, are entitled to make or second motions. A majority of those members of the Board present and voting on any matter shall decide the matter before the Board. The chairman and other officers of the Board shall be allowed to vote on matters the same as other members of the Board. Votes of the Board shall be included in the minutes of the Board and kept as part of the permanent records of the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21

History: Filed January 21, 2003

440-X-2-.07. List of Certified Contractors.

The Board may publish annually a list of names and addresses of all individuals certified by the Board. The Board may also publish the list of certified contractors on the Board's designated website. The Board may provide, upon

request to the Board, a copy of said list to persons and may require a reasonable fee to cover the costs of producing and mailing said directory.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-31

History: Filed January 21, 2003

440-X-2-.08. Advisory Opinions.

The Board may, in its discretion, issue an advisory opinion to any certified contractor, governmental official, or entity substantially affected by a Rule or statute enforceable by the Board. Board advisory opinions may address the applicability of such Rules or statutes and other matters to assist the certified contractor, government official, or entity with the meaning and scope of the orders of the board and the Rules and Regulations of the Board. All requests for advisory opinions must be in writing and must specifically state that it is a "request for an advisory opinion". The Board's general counsel shall assist the Board as necessary in responding to these requests for advisory opinions.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Sections 34-31-33

History: Filed January 21, 2003

440-X-3. Licensing and Fees.

440-X-3-.01. Requirements for Licensing of Certified Contractors

(1) All certified contractors shall have and maintain a current license issued by the Board. A license is current only during the calendar year in which it is issued and shall expire on December 31 of each year. Unless renewed, a license shall automatically lapse at the end of the calendar year in which it was issued.

(2) Certification by the Board is required for all persons employed by realty management companies who manage property owned by others if they perform heating and air conditioning installation, service, or repair work.

(3) Certification by the Board is also required for work involving air duct cleaning services, filter changing services test and balance services, replacement of air filters or filter media, and the cleaning of heating and air conditioning equipment or systems.

(4) Certification by the Board is also required for heating and air conditioning installation, service, or repair work performed on site in manufactured or modular homes.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-19; 34-31-26

History: Filed January 21, 2003

440-X-3-.02. Filing Requirements

All applications for licensing with the Board, including annual renewals and all other submissions to the Board required by these rules, shall be deemed filed when received by the executive director or his designee. The executive director or his designee may reject all applications for licensing and annual renewals that are inaccurate, incomplete or for which all fees and pending administrative fines have not been paid at the time the application or renewal is filed.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-3-.03. Form of Licensing.

(1) Licenses shall be issued only to those individuals who have properly submitted their applications to the Board under Alabama law and the Rules and Regulations of the Board, and who have taken and passed the

Board's written examination on the Board's oral or practical examination as provided in Alabama law.

(2) Any individual applying for a license must personally satisfy all licensure requirements before issuance of the license as certified contractor by the Board.

(3) All applicants for certified contractor status and all annual renewals shall provide a performance bond in the amount of Ten Thousand Dollars (\$10,000.00) to the Board.

(4) Any individual who desires to engage in the business of heating and air conditioning installation, service, or repair in their individual name shall first obtain certification by the Board in their individual name.

(5) Any applicant for certification by the Board who proposes to engage in the business of heating and air conditioning installation, service, or repair as a partnership, corporation, business trust, or other legal entity must apply through a person in responsible charge as defined by Alabama law and the Rules and Regulations of the Board. The application to the Board shall provide the name of the partnership and its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of any other legal entity and its members. The application to the Board shall establish that the person in responsible charge under Alabama law and these Rules and Regulations is legally qualified to act for the business organization in all matters connected with its heating and air conditioning installation, service, or repair business. The certification by the Board issued upon such application described in this Rule shall be issued in the name of the person in responsible charge and shall include the name of the business organization engaged in the heating and air conditioning installation, service, or repair business.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-226; 34-31-28; 34-31-30

History: Filed January 21, 2003

440-X-3-.04. Exemptions.

The licensing requirements for certified contractors do not apply to the following:

(1) Retail sellers of heating and air conditioning systems who do not provide installation of said systems, or provides for the contracting for the service, repair or installation of said systems;

(2) Heating and air conditioning installation, service or repair work performed by an owner or a building on said building owned by him or her;

(3) Heating and air conditioning installation, service, or repair work performed by anyone who is regularly employed as a maintenance person for a certified contractor, provided that the work is performed under the supervision, direction, management, and control of the certified contractor as the person in responsible charge. This exemption does not apply to work performed by a maintenance person not under the supervision, direction, management or control of the certified contractor in responsible charge for third parties.

(4) In instances where a certified contractor bids installation work and is responsible for obtaining all necessary and required permits, the certified contractor may subcontract the installation of duct work to an uncertified person who is performing the work under the supervision of the certified contractor as the person in responsible charge. The certified contractor is responsible for all such work performed and is considered by the Board as the person in responsible charge for such work should the work fail to meet the minimum standards under these Rules. This exemption does not apply to design and installation of duct work not performed under the responsible supervision of a certified contractor.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-18

History: Filed January 21, 2003

440-X-3-.05. Failure to Renew License.

(1) Any certified contractor who does not renew his certification at the end of a calendar year and who remains unlicensed for a period of one calendar year or more shall be required to apply as a new applicant and will be required to pass the written examination offered by the Board.

(2) Any certified contractor who has previously passed the written examination but has not renewed his certification at the end of a calendar year shall have until December 31 of the calendar year following lapse of certification to renew his certification without additional testing by the Board. However, additional fees will be imposed.

Example (1) Certified contractor Jones holds an active certification for the year of 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and complete renewal form for 2003 on February 15, 2003, along with a check for \$250.00: \$150.00 active renewal fee, \$100.00 late fee.

(3) Any certified contractor who wishes to renew their certification on or after March 1st and prior to April 1st of the calendar year following the lapse of certification shall be required to pay a penalty fee in addition to any other late fees established by the Board.

Example (2) Certified contractor Smith holds an active certification for the year of 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and complete renewal form for 2003 on March 15, 2003, along with a check for \$500.00: \$150.00 active renewal fee, \$100.00 late fee, and \$250.00 penalty fee.

(4) Any certified contractor who wishes to renew their certification on or after April 1st of the calendar year following the lapse of certification shall be required to pay a delinquent fee in addition to all late and penalty fees established by the Board.

Example (3) Certified contractor Brown holds an active certification for 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and completed 2003 renewal form on April 15, 2003, along with a check for \$1,000.00: \$150.00 active renewal fee; \$100.00 late fee, \$250.00 penalty fee and \$500.00 delinquent fee.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-25; 34-31-26

History: Filed January 21, 2003

44-X-3-.06. Alternative Methods of Testing by the Board.

After an individual has taken the written examination without achieving a passing examination score, an individual, upon specific written request to the Board, will be given an opportunity to take an oral or practical examination equivalent to the written examination. This oral or practical examination shall be held within six months from the date of the applicant's first or latest unsuccessful written examination if requested by the applicant.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-28

History: Filed January 21, 2003

440-X-3-.07. Certification by Grandfathering.

All individuals who met the requirements of grandfathering must have applied for certification by grandfathering with the Board no later than August 31, 1992.

Author: Mark Montiel, Kathy LeCroix
Statutory Authority: *Code of Alabama 1975*, Section 34-31-28(b)
History: Filed January 21, 2003

440-X-3-.08. Procedure in the Event of a Loss of Certified Contractor.

(1) In the event a certified contractor in responsible charge leaves by termination, layoff, or voluntary resignation a partnership, corporation, business trust, or other legal entity operating under the certification of the certified contractor, the certified contractor shall notify the Board within ten (10) days of the termination, layoff, or voluntary resignation.

(2) In the event of the death of a licensed certified contractor, the Board shall be notified within ten (10) days by any partnership, corporation, business trust, or other legal entity operating under the certification of the certified contractor as the person in responsible charge. These business entities may be allowed to complete work that was in progress at the time of the death of the certified contractor. These business entities shall not enter into any new contracts, verbal or written, or engage in the installation or service and/or repair of any heating and air conditioning systems, unless under the direction of a certified contractor in responsible charge of the installation, service, or repair of the heating and air conditioning systems. Once a certified contractor has been selected, the business entity must notify the Board of such selection.

Author: Mark Montiel, Kathy LeCroix
Statutory Authority: *Code of Alabama 1975*, Section 34-31-18; 34-31-32
History: Filed January 21, 2003

440-X-3-.09. Person in Responsible Charge and Obligations of Person in Responsible Charge.

(1) The person in responsible charge must direct the projects involving the installation or service and repair of heating and air conditioning systems under Alabama law. The person in responsible charge must be a full-time employee, owner, partner, or corporate officer of the partnership, corporation, business trust, or other legal entity. This person in responsible charge must possess the requisite skill, knowledge, and experience and have the responsibility to supervise, direct, manage, and control the installation, service, or repair activities of the business entity with which he is affiliated. The Board shall examine the technical and personal qualifications of the person in responsible charge and may investigate and/or examine that person's qualifications.

(2) If the person in responsible charge of a business entity desires to qualify an additional business entity as being under his certification with the Board, that person is required to appear at a meeting of the Board and present evidence of ownership, ability to supervise, direct, manage and control that

business entity. The person in responsible charge must also present evidence at or before this Board meeting of his financial responsibility for the additional business entity. The person in responsible charge shall also pay an additional licensing fee to the Board for this additional business entity and shall provide a bond in the amount required for certified contractors under these Rules. It is entirely within the Board's discretion to allow or disallow the additional business entity to be certified under the certified contractors responsible charge.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-18

History: Filed January 21, 2003

440-X-3-.10. Fees and Charges.

(1) The following fees and charges have been established by the Board.

- | | | |
|----|---|----------------------|
| 1. | Written examination fee to defray costs of testing | \$125.00 |
| 2. | Practical examination fee to defray costs of testing | \$300.00 |
| 3. | Initial fee for certification | \$150.00 |
| 4. | Annual renewal fee for active certification | \$150.00 |
| 5. | (a) Late fee for active certification renewal received after December 31 and prior to March 1) | \$100.00 |
| | (b) Penalty fee for renewal received on or after March 1 and prior to March 31 (in addition to late fee) | \$250.00 |
| | (c) Delinquent penalty for renewal received on or after April 1 (in addition to late and penalty fee) | \$500.00 |
| 6. | Annual renewal fee for inactive contractors
(Inactive contractors are not eligible to purchase local licenses or permits until the inactive contractor returns to certified contractor status and meets all requirements for licensing as a certified contractor, including payment of the proper fee) | \$ 75.00
\$ 75.00 |
| | (a) Late fee for the renewal of inactive status received after December 31 and prior to March 1 | \$ 50.00 |
| | (b) Penalty fee for renewal received or after March 1 and prior to March 31 (in addition to late fee) | \$250.00 |

	(c) Delinquent penalty for renewal received on or after April 1 (in addition to late and penalty fees)	\$500.00
7.	Issuance of Replacement Certification Cards	\$ 25.00
8.	Administrative fee for continuing education deficiency plan	\$25.00

(2) Examination fees to defray the costs of testing are in addition to the fees required for initial certification, renewals, inactive contractor status, and the penalty for late renewals.

(3) All fees established by the Board shall be submitted with the application for examination to become certified with the Board, and no part of said fees shall be refunded. These fees shall be received by the Board and held for the purpose of paying the expenses associated with processing the application and to pay the expenses associated with testing.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-25; 35-31-29; 34-31-32

History: Filed January 21, 2003

440-X-3-.11. Replacement Licenses.

The Board shall issue a replacement license for a certified contractor who submits a written, sworn, and notarized statement to the Board that includes information establishing the following:

(1) That the certified contractor's current license has been stolen, taken, lost, destroyed, or defaced; or

(2) That the certified contractor's name has been changed by marriage or court order. If the certified contractor seeks issuance of a replacement licensed to accommodate a name change, the originally issued certification card must be returned to the Board as a condition of the issuance of the new certified contractor card.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-27

History: Filed January 21, 2003

440-X-4. Continuing Education Requirements for Certified Contractors.

Rule 440-X-4-.01. Continuing Education Program; Continuing Education Committee.

The Board shall adopt an annual program of continuing education for certified contractors by January 1 of each year. The Board may designate a Continuing Education Committee on an annual basis to assist in the development of a curriculum of courses each year. The Continuing Education Committee may recommend to the Board the approval or disapproval of courses and classes that meet the requirements for continuing education credit hours for certified contractors. The Board may require all courses or classes that seek status as approved by the Board to first be submitted to the Continuing Education Committee for recommended approval or disapproval by the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4-.02. Requirements.

Beginning in the calendar year 2001, all certified contractors shall be required to acquire eight (8) credit hours of continuing education over a two-year period. The Board may require certified contractors to submit to the Board proof of compliance with the continuing education requirement on an annual basis to allow the Board to maintain its records regarding continuing education attendance of each certified contractor.

All certified contractors licensed with the Board shall complete the required continuing education hours prior to receiving a renewal of their certification. The failure to complete the minimum continuing education requirements during a two-year period shall prevent the renewal of a certified contractor's license until proof of compliance is submitted in writing to the Board, all late, penalty and delinquent fees are applicable.

Example (1) Certified contractor Jones received his initial certification either in or prior to the year 2000. In order to be eligible to renew his certification for 2003, he must complete eight (8) hours of approved continuing education classes prior to December 31, 2002, and every two years thereafter.

Example (2) Certified contractor Brown received his initial certification in 2001. In order to be eligible to renew his certification for 2004, he must

complete eight (8) hours of approved continuing education classes prior to December 31, 2003, and every two years thereafter.

Example (3) Certified contractor Smith received his initial certification in 2002. In order to be eligible to renew his certification for 2005, he must complete eight (8) hours of approved continuing education classes prior to December 31, 2004, and every two years thereafter.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4-.03. Deficiency.

In the event medical hardship or emergency prevents a certified contractor from timely complying with the Board's continuing education requirements, the Board may allow the certified contractor to submit a deficiency plan on a form prescribed by the Board, for approval by the Board, which shall describe the contractor's plan for compliance with the continuing education requirements. The proposed deficiency plan shall be specific in describing the plan for full compliance with the continuing education requirement and shall be accompanied by the deficiency plan fee established by the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4-.04. Annual Program; Approval of Courses and Curricula.

The annual program of continuing education established by the Board shall contain the procedures for approval of proposed courses and curricula for credit hours of continuing education by certified contractors. All institutions, organizations, and individuals shall submit proposed courses and curricula to the Board's Continuing Education Committee for recommended approval or disapproval by the Board. The Board will consider proposed courses and curricula for approval only after a review of the proposal by the Board's Continuing Education Committee. Requests for approval of proposed courses and curricula shall contain detailed information regarding the instructors to be used; the proposed physical facilities and classrooms, including equipment to be utilized in instruction; the course syllabus, which shall include a sufficient description of the planned instruction, resource materials, and textbooks involved in the instruction; and the length of the course instruction. The proposed courses and curricula should also include the resumes, areas of specialty, and prior teaching experience of proposed instructors.

Upon request to the Board, the Board shall furnish a copy of its standards for approval of proposed continuing education courses and curricula as recommended by the Continuing Education Committee and approved by the Board. The Board shall maintain a list of all approved courses and curricula to assist certified contractors in efforts to comply with the state law requirements of continuing education.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4.05. Denial of Application for Course or Curricula; Request for Reconsideration

The Board may deny any application for course or curriculum approval that fails to meet the established standards of the Board or which the Board considers inadequate to properly educate its certified contractors. The Board may consider requests for reconsideration of approval of courses and curricula which have been denied upon a submission of a written request to the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4.06. Written Agreement upon Approval.

Upon approval of a proposed course or curriculum by the Board, the Board shall require the approved provider to execute a written agreement to conduct the approved course and curriculum in accordance with the terms of the Board's approval. This agreement shall be signed by the applicant for course and curriculum approval.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4-.07. Revocation, Suspension, Termination of Course or Curricula.

The Board may revoke, suspend, or terminate any course or curriculum approval if the Board determines that a course provider has failed to comply with the Rules of the Board or its continuing education requirements or has failed to comply with its written agreement regarding conduct of the approved course or curriculum.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-4-.08. Monitoring of Course and Curricula.

The Board shall have the authority to monitor all approved courses and curricula to insure that approved providers and instructors fully comply with the Rules of the Board and the conditions of approval by the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26

History: Filed January 21, 2003

440-X-5 Minimum Standards for Installation, Service, and Repair of Heating and Air Conditioning Systems by Certified Contractors.

440-X-5-.01. Minimum Standards for Installation, Service and Repair.

The Board, pursuant to its authority under Section 34-31-21(g), *Code of Alabama 1975*, adopts the following minimum installation service, and repair standards for all certified contractors:

(1) All certified contractors shall comply with the minimum standard required by ASHRAE Standard 90.2P, as described in *Energy Efficient Design for Residential Structures*;

(2) All certified contractors shall comply with the minimum standards required by ANSI/ASHRAE 15-94 as describe in *Safety Code for Mechanical Refrigeration*;

(3) All certified contractors shall comply with the minimum standards required by ACCA/Manual N as described in *Load Calculation for Commercial Summer and Winter Air Conditioning* for using unitary equipment;

(4) All certified contractors shall comply with the minimum standards required by ACCA/Manual J as described in *Load Calculation for Residential Winter and Summer Air Conditioning*;

(5) All certified contractors shall comply with the minimum standards required by ACCA/Manual D as described in *Duct Design for Residential Winter and Summer Air Condition and Equipment Selection*;

(6) All certified contractors shall comply with the minimum standards required by ACCA/Manual CS as described in *Commercial Applications Systems and Equipment*;

(7) All certified contractors shall comply with the minimum standards required and described in the *International Mechanical Code*; including appendices;

(8) All certified contractors shall comply with the minimum standards required by and described in the *International Fuel Gas Code*;

(9) All certified contractors shall comply with the minimum standards required by and described in the *NFPA 70 National Electrical Code*; 1996

(10) All certified contractors shall comply with the minimum standards required and described by applicable local codes or ordinances. Where there is a conflict between the minimum standards adopted *by Board and the applicable local codes or ordinances, the most restrictive will govern*;

(11) All certified contractors shall comply with the minimum standards required by and described in *SMACNA HVAC Duct Construction Standards, Metal and Flexible*;

(12) All certified contractors shall comply with the minimum standards required by and described in *SMACNA Fibrous Glass Duct Construction Standards*;

(13) All certified contractors shall comply with the minimum standards required by ACCA/Manual S as described in *Residential Equipment Section*;

(14) All certified contractors shall comply with the minimum standards required by and described in *Refrigeration and Air Conditioning* by ARI;

(15) All certified contractors shall comply with the minimum standards required for ACCA or equivalent ductulators;

(16) All certified contractors shall comply with the minimum standards required by NFPA 90A and described by *Air Conditioning and Ventilating Systems*;

(17) All certified contractors shall comply with the minimum standards required by NFPA 90B and described by *Warm Air Heating, Air Conditioning*;

(18) All certified contractors shall comply with the minimum standards required by NFPA 96 and described by *Vapor Removal and Cooking Equipment*

(19) All certified contractors shall comply with the minimum standards of business law.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(a)

History: Filed January 21, 2003

440-X-5-.02. Compliance with Updated or Amended Versions.

Certified contractors shall follow the updated or amended versions of all publications and regulations described in these Rules for compliance with the minimum standards for installation, service, and repair of heating and air conditioning systems.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g)

History: Filed January 21, 2003

440-X-5-.03. Certified Contractors to Furnish Information to the Board Regarding Installation, Service, and Repair

All certified contractors shall be required to provide the Board, if requested, a copy of the heat gain, heat loss, duct sizing, gas piping calculations drawings or other information used by the certified contractor or concerning the installation, service, and repair of heating and air conditioning systems by the certified contractor.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g)

History: Filed January 21, 2003

440-X-5-.04. Gas Connections.

Certified contractors, who do not hold the appropriate gas fitters license when performing work on heating and air conditioning systems involving gas connections, shall work only the gas piping after the shutoff valve to the unit located ahead of all controls. Certified contractors shall conform and abide by all city, county, and state codes in regard to permits, licenses, and inspections for gas appliance, installation and change outs.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g)

History: Filed January 21, 2003

440-X-5-.05. Installation, Service, and Repair of Heating and Air Conditioning Systems in Modular or Manufactured Housing

Any on site heating and air conditioning installation, service, or repair work performed on manufactured or modular homes is considered to be under contractual agreement between the homeowner and the contractor and is within the regulatory authority of the Board. All persons performing such work on site are required to be certified by the Board. The Board will also refer complaints involving heating and air conditioning systems in manufactured housing to the Alabama Manufactured Housing Commission established by state law. Upon request by the Alabama Manufactured Housing Commission, the Board will assist in investigations and consumer complaints involving heating and air conditioning systems in manufactured or modular homes. The Board will investigate all illegal or uncertified contractors involved in the installation service, or repair work performed in manufactured or modular home construction.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g)

History: Filed January 21, 2003

440-X-6 Disciplinary and Compliance Proceedings.

440-X-6-.01. Violations of State Law and the Rules of the State of Alabama Board of Heating and Air Conditioning Contractors

All certified contractors and every municipal, county, or state official charged with the responsibility of issuing building or similar permits shall report to the Board the name and address of any person who has violated the state law and/or rules and regulations applicable to the State of Alabama Board of Heating and Air Conditioning Contractors.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-24

History: Filed January 21, 2003

440-X-6-.02. Initiation of Compliance Investigation.

(1) The Board may initiate investigations, as it deems appropriate, to determine compliance with state law and the rules and regulations of the Board.

(2) The Board may also investigate any other actions reported to the Board by written or verbal complaint. The Board may request the personal appearance of the complaining person and may require the submission of a written complaint to the Board containing the factual allegations on which the complaint is based. The Board may also require the complaining person to submit to the Board a written and sworn statement containing the facts involved in the complaint.

(3) The Board shall retain the authority to pursue or discontinue investigations based on the information obtained in its investigation of a complaint, including the cooperation of all persons involved in the complaint to the Board.

(4) The Board may require a certified contractor to submit a written and sworn statement to the Board in response to any complaint or investigation by the Board.

(5) All reports of investigations of complaints shall be submitted to the Investigative Committee of the Board.

1. This Investigative Committee shall be comprised of: at least one Board member; the executive director of the Board; and the Board's attorney. The Investigative Committee shall review the investigation and complaint to determine whether probable cause exists for disciplinary or enforcement proceedings by the Board.

2. The Board member participating in the probable cause determination by the Investigative Committee shall not participate in any disciplinary proceedings of the Board arising from the investigation. The Board shall name the Board member to serve on the Investigative Committee on an annual basis.

No Board members shall serve more than two (2) consecutive complete annual terms on the Investigative Committee. The Board shall have the power to replace or remove the designated Board member serving on the Investigative Committee due to any vacancy in the Board member position caused by any reason. This temporary appointment shall exist until the Board conducts its next required meeting, at which time a replacement Board member shall be named. This temporary Board member may serve the remainder of the existing term on the Investigative Committee and is eligible for appointment to full annual terms as described in these Rules.

The Board shall also have the power to name a Board member to serve as a substitute appointment to the Investigative Committee for any specific investigation or complaint in which the designated Board member serving an annual term has recused himself or is disqualified from participating due to a conflict of interest, including involvement in the investigation as a possible witness to the facts involved in the investigation.

(6) The Board shall refer any and all investigations involving possible criminal violations of state law to the State Attorney General or other appropriate state or local law enforcement agency. The Board shall assist these state law and local law enforcement agencies as necessary to insure that state law and the rules of the Board are complied with by all certified contractors.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003

440-X-6-.03. Administrative Complaint Procedures.

(1) Upon a determination of probable cause by the Investigative Committee that disciplinary proceedings are necessary against a certified contractor, the Board's attorney shall prepare a summons and administrative complaint to be executed by the executive director on behalf of the Board.

(2) The Board shall serve a copy of the summons and administrative complaint on the certified contractor or other person against whom the administrative complaint has been filed. The method of service by the Board shall be either by certified mail, return receipt requested or personal service. In the event the Board is unable to obtain service of the summons and administrative complaint by certified mail or personal service, the Board or its

attorney may serve the summons and administrative complaint by first class mail to the most recent address on file with the Board of the certified contractor or other person against whom the administrative complaint has been filed.

(3) The summons and administrative complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act, Section 12(b).¹

(4) Upon service of the administrative complaint, the Board shall schedule an administrative hearing to be held within four months of the date of service of the summons and administrative complaint by certified mail or personal service. If the method of service is by first class mail as described in these Rules, The Board shall schedule the administrative hearing to be held within five months of the date of mailing the summons and administrative complaint. The administrative hearing shall be held at the offices of the Board or other location designated by the Board.

(5) If the person against whom the administrative complaint has been filed is a member of the Board, that Board members shall be notified in writing of the administrative charges by the Board's executive director and shall not participate in any proceedings or meetings related to the complaint.

(6) The Board's attorney shall serve as the prosecuting attorney for the Board in all administrative charges issued by the Board. The Board's attorney shall present evidence in support of the administrative complaint at the administrative hearing conducted by the Board or its Hearing Officer.

(7) If, following its investigation, the Investigative Committee determines that no probable cause exists, the investigative proceedings shall be terminated and that particular investigation closed.

(8) At all times during the investigation process, including the period of time that the Investigative Committee has begun its investigation, the Board may enter into informal settlement agreements, provided that the informal settlement is ratified and approved by the Board.

¹ Alabama Administrative Procedure Act, Section 12(b) reads as follows:

The notice shall include

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and
- (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

Section 41-22-12(b), *Code of Alabama 1975*.

(9) The Board retains the discretionary authority to invoke the administrative complaint procedures set forth in these Rules against any unlicensed contractor in lieu of instituting criminal proceedings against the unlicensed person. This provision does not restrict in any manner the authority of other state or local law enforcement agencies to pursue criminal penalties as otherwise provided by state law.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003

440-X-6-.04. Informal Settlement Proceedings.

(1) The Board or other party to an administrative proceeding may initiate informal settlement negotiations to resolve the administrative complaint or investigation by the Board.

(2) Neither the Board nor any other party is obligated or required to use informal settlement procedures or to participate in informal settlement negotiations.

(3) Any informal settlement shall be to terms that are negotiated to be in the best interest of the Board and the public and shall not become final until ratified and approved by the Board. All informal settlement agreements ratified and approved by the Board shall be incorporated by reference in the official minutes of the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003

440-X-6-.05. Consolidation of Administrative Proceedings.

(1) The Board or its Hearing Officer may order the consolidation, in whole or in part, of two or more administrative proceedings whenever it appears that the matters are substantially related and that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby. This consolidation may involve multiple cases involving the same parties or may involve multiple cases involving different parties provided that the other requirements of consolidation have been met.

(2) Any party may request that the Board or its Hearing Officer sever any part of an administrative proceeding that has been consolidated when it appears the consolidation will not expedite or simplify consideration of the issues or that any party will be prejudiced by the continued consolidation of proceedings.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.06. Motions.

(1) All motions, except those made orally on the record during an administrative hearing, shall be in writing and state the grounds in support of said motion. All motions shall describe the relief sought and include any legal authority relied upon for said relief. A copy of each motion filed with the Board shall be served on all other parties accompanied by a certificate of service describing the method of service of the motion on the other parties.

(2) The Board or its Hearing Officer may permit the non-moving party to file a response to any motion. Any response filed shall be served on the other parties in the same manner as required for the filing of motions.

(3) Any party may submit affidavits or other legal evidence in support of a motion or response; provided that said evidence is served on the other parties as an attachment to the motion or response filed with the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.07. Prehearing Procedures.

(1) The time requirements for conducting an administrative hearing may be waived by the filing of a written joint motion of the parties indicating an agreement to delay the proceedings and including a brief statement of the reasons for the requested delay. The Board or its Hearing Officer shall retain the discretionary authority to grant or deny the request to delay the proceedings.

(2) The Board or its Hearing Officer may require the parties to appear at a specified time and place in advance of the hearing for one or more prehearing conferences to consider: the settlement of the case; the identification and/or clarification of the contested issues; the submission of admissions or stipulations to facts; the stipulation to the genuineness of documents that avoid unnecessary witnesses or proof; the identification of any facts of which official notice is proposed to be taken; the identification of any expert witnesses expected to testify and the substance of any opinion to which the expert witness may testify; and any other such matters that may be necessary or relevant to the determination of the issues involved in the administrative hearing.

(3) The Board or its Hearing Officer shall issue a written prehearing order reciting the actions taken at any prehearing conference, including any stipulations or agreements by the parties regarding the issues to be resolved at the administrative hearing.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32' 34-31-33

History: Filed January 21, 2003

440-X-6-.08. Prehearing Discovery.

(1) Prehearing discovery shall be permitted only upon a determination by the Board or its Hearing Officer that: the discovery will not unreasonably delay the proceedings; the discovery sought has significant probative value to the issues involved in the administrative hearing, that the discovery sought will prevent fraud; the discovery sought will prevent undue surprise at the administrative hearing; and/or the discovery sought will otherwise provide fundamental fairness to the parties to the administrative hearing. All discovery sought must relate to the charges contained in the administrative complaint or the defenses to those charges.

(2) The following methods of discovery are available, pursuant to the discretion of the Board or the Board's Hearing Officer:

1. Depositions upon oral examinations of expert witnesses;
2. Interrogatories to the Respondent;
3. Production and copying of documents and things;
4. Request for admissions to the Respondent;
5. Requests for entry upon land for inspection and other purposes against any person;

(3) All discovery should be conducted in accordance with any terms and conditions imposed by the Board or its Hearing Officer. These terms and conditions may be imposed to protect the parties or other persons from annoyance, embarrassment, oppression, or undue burden and expense. Court reporter's fees and reasonable copying costs shall be borne by the party requesting discovery.

(4) Depositions of all parties and their employees, agents, and other persons under their control shall be conducted at the Board's offices in Montgomery, Alabama, unless another location is agreed upon by all parties.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32' 34-31-33

History: Filed January 21, 2003

440-X-6-.09. Subpoenas.

(1) The attendance of witnesses may be required by subpoena. The Chairman of the Board or the Board's Hearing Officer may grant a request for a subpoena upon a showing that the evidence sought is necessary, relevant, and material to the administrative hearing or investigation by the Board. The subpoena may be issued by the Chairman of the Board, the Board's Hearing Officer, or other person designated by the Board.

(2) The production of documentary evidence may also be required by subpoena. These subpoenas may be issued according to the same requirements and conditions for those subpoenas to compel the attendance of witnesses.

(3) Subpoenas shall be served in accordance with the Alabama Rules of Civil Procedures.

(4) Witnesses summoned to appear shall be paid the same as state court fees and mileage expenses that are paid to witnesses appearing in the courts of Alabama. These witness fees and mileage expenses shall be paid by the party seeking the appearance of the witness.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.10. Failure of a Party to Appear.

If a party fails to appear at a hearing after being given notice of the hearing as required by these Rules, the Board or the Board's Hearing Officer may proceed with the hearing in the absence of the party.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.11. Administrative Hearing Procedures.

(1) The Board may appoint a person to act on its behalf as Hearing Officer at its administrative hearings. The Hearing Officer shall preside at administrative hearings and shall rule on all questions of evidence and procedure. The Hearing Officer shall admit all evidence that is relevant, material, and which has probative value to the issues under consideration by the Board. Offers of settlement and compromise are not admissible. The Hearing Officer shall consider the evidence presented and submit a recommendation to the Board, including: a procedural summary of the case; findings of fact; conclusions

of law; and a recommended decision on the issues included in the administrative complaint including, if necessary, suggested administrative punishment pursuant to the charges in the administrative complaint. The Hearing Officer's recommendations shall be considered by the Board but is not binding on the Board. The Board shall issue an appropriate administrative order modifying, approving, or rejecting the Hearing Officer's recommendation. The Board shall issue its orders within sixty (60) days after receipt of the hearing Officer's recommendation. If the hearing was conducted by the Board itself, the Board shall issue its order within sixty (60) days after receipt of the court reporter's transcript of the administrative hearing. The Board's order in all instances shall include a procedural history of the case, findings of fact, conclusions of law, and its decision regarding the issues contained within the administrative complaint including, if necessary, the appropriate administrative punishment.

(2) Prior to the taking of witness testimony at the administrative hearing, the Respondent or Respondents shall enter a plea of "guilty" or "not guilty" to each charge contained in the administrative complaint.

(3) All parties shall be allowed to make a concise opening statement regarding the charges in the administrative complaint, defenses to the administrative complaint, expected testimony and evidence, and any proposed administrative punishment.

(4) The parties shall be allowed to present evidence by direct and cross-examination. The executive director, or a designee acting on behalf of the Investigative Committee, shall present its evidence first followed by the other parties in the order determined by the Board or its Hearing Officer. Examination of witnesses shall not be unduly repetitious. The testimony of all parties and witnesses shall be made under oath administered by the Board or the Board's Hearing Officer.

(5) The Board or the Board's Hearing Officer may examine and question any party or witness regarding the administrative complaint and defenses thereto.

(6) All parties shall be allowed to make a brief closing statement summarizing the evidence presented and regarding the applicability or relevant state law and/or Board rules and regulations.

(7) All testimony and statements given in the administrative hearing shall be electronically or stenographically recorded. Any party wishing to obtain a transcript of the hearing shall make arrangements with the court reporter to receive a copy of the transcript at their own expense.

(8) The parties shall not be bound by the strict rules of evidence prevailing in the courts. Evidence shall be admitted in accordance with the

Alabama Administrative Procedures Act, Section 13.² The administrative complaint and all attachments thereto shall be made a part of the administrative record for consideration by the Board without further authentication.

² Alabama Administrative Procedures Act, Section 13 reads as follows:

In contested cases:

- (1) The rules of evidence as applied in nonjury civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Except as hereinafter provided, objections to evidentiary offers may be made and shall be noted in the record. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a party of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and interests of the parties will not be prejudiced substantially, any part of the evidence may be received or may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness. The testimony of parties and witnesses shall be made under oath. Provided, however, in the hearing of a contested case where judicial review of the case is by trial de novo, the agency may announce that it shall not be necessary that objections be made during the hearing and upon such announcement, it shall not be required or necessary that objection to be made to any testimony or evidence which may be offered by either party, and on the consideration of such cases the agency shall consider only such testimony and evidence as is relevant, material, competent and legal, and shall not consider any testimony or evidence which is irrelevant, immaterial, incompetent or illegal, whether objection shall have been made thereto or not, and whether such testimony be brought on direct, cross or re-direct examination, or is hearsay. The agency shall not be required to point out what testimony or evidence should be excluded or not considered. Either party, on submission, shall have the privilege of calling attention to any testimony or evidence which is deemed objectionable. If specific objection be made to any evidence and a ruling made thereon by the agency, this exception shall not apply to such evidence.
- (2) Documentary evidence otherwise admissible may be received in the form of copies of excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (3) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.
- (4) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as party of the record of decision that fairness to the parties does not require an opportunity to contest such facts.
- (5) The experience, technical competence, and specialized knowledge of the agency may be utilized in the evaluation of evidence.

Section 41-22-13, *Code of Alabama 1975*.

(9) The Board or its Hearing Officer may admit into evidence the deposition of any witness who is not subject to the subpoena power of the Board or who is unable to be present to testify at the hearing because of death, physical or mental illness, or other good reason at the discretion of the Board or its Hearing Officer.

(10) All exhibits that are offered into evidence, whether admitted or not, shall be made a part of the administrative record in the case and be included as part of the court reporter's original transcript of the hearing. The party who offers each exhibit shall be permitted to substitute a true copy of the exhibit for the original exhibit upon request to and permission by the Board or its Hearing Officer.

(11) All objections concerning the conduct of the hearing or the admission of evidence may be stated orally or filed in writing during the hearing. The objections and responses thereto shall include a statement of the grounds for the objection and legal authority relied upon. The ruling on the objection by the Board or the Board's Hearing Officer shall be made a part of the administrative record of the hearing. Any party may make an offer of proof regarding evidence that is not admitted and may describe the general nature of the evidence offered and not admitted as part of the administrative record of the hearing.

(12) The Board or the Board's Hearing Officer may allow the parties to submit for consideration a proposed order or recommendation which includes a procedural history, proposed findings of fact, conclusions of law, and any suggested administrative punishment. The parties shall cite the appropriate pages of the hearing transcript for any proposed findings of fact.

(13) The administrative hearing shall be otherwise conducted in compliance with the provisions and in accordance with the Alabama Administrative Procedures Act, Section 41-22-12, *et. seq.*, *Code of Alabama 1975*.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.12. Penalties.

(1) The Board may, in its discretion, issue a written public or private reprimand or remove, revoke, or suspend the certification of any certified contractor who provides substandard or dangerous service, repair, or installation, or who otherwise violates state law or the rules and regulations of the Board.

(2) The issuance of two or more written letters of public reprimand to a certified contractor may serve as probable cause for the Investigative Committee to proceed with administrative charges to seek the revocation or suspension of the contractor's certification by the Board, pursuant to an administrative hearing described in these rules.

(3) The Board may, in addition to or in lieu of other penalties, levy and collect administrative fines for serious violations of state law or the rules and regulations of the Board of not more than \$500.00 for each violation.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003